Guarding the Secrets of the Supreme Court

It May Be Possible That There Have Been "Leaks" in Decisions But Washington Does Not Believe It

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THERE may have been some sort of a "leak" of information regarding the Supreme Court's decision in the war-time prohibition and Southern Pacific Railroad lands cases, but nobody connected with the court believes it.

Considering its precautions, such that it is not to be admitted there is any chance for advance information of the nature of decisions to get out, the attitude of the court is that while the slightest reflection on the integrity of the court and its attachés must be investigated in order to preserve its spotless honor, it is practically certain that the latest leak scandal is only one more case of some of the numerous "insiders" of Washington trying to sell something they haven't got.

Indeed, somebody may have "sold" something and somebody else may have bought a brick that turned out to be gold, though the vendor may well have known that there was only a 50 per cent chance that he was selling a genuine article.

In the Southern Pacific case it was simply a question of whether the decision would or would not restore certain valuable lands to the railway company. Anybody interested in Southern Pacific would know that if the lands were returned to the company it would be wealthier and its stock more valuable. Wall Street is always gullible on anything that is labeled "information," for it has a certain value in the Street, whether true or false, as "dope" for speculators, if for no other reason. Anybody with a mysterious manner and a well chosen bunch of self-recommendations in regard to the profundity of his interiorness in Washington affairs should have been able to make good money on the Southern Pacific decision by "tipping" it either way. He might not, if his "confidential information" turned out to have been a poor guess, have found the same client for his next offering of "authoritative information," but he undoubtedly would find somebody else.

An Even Chance

Similarly with the Supreme Court's recent decision in the war-time prohibition case. Either the court would decide that it was valid or it would decide that it was not. Advance information would be valuable, and also what professed to be advance information. The fact that some one may have professed to be in guilty communication with some employee of the court and to have asserted that by means of that relation he knew what the decision was would prove nothing. Any one trying to sell merchandise of that sort would be prompted to intimate something as to its authenticity as a means of enhancing the value of his wares.

It is not inconceivable that any industrious, shrewd and resourceful person armed with a corruption fund who should make a study of the way Supreme Court decisions and opinions are made and handled would find some weak point in the routine where by theft or bribery he might get access to the coveted document well in advance of the delivery of the opinion in court. Nevertheless, the court takes such care to protect itself and has such confidence in all who come in contact with decisions from the moment they begin to evolve in the notes of a justice until they are handed down in open court that the chance of anything carelessly or corruptly leaking is considered about as good as that one of the justices could be bought. Inasmuch as there has never been any reflection on the personal integrity of any justice of the Supreme Court from its founding down to the present time, there is from this point of view no possibility of a decision seeing the daylight of public knowledge before the appointed time.

It is the custom of the justices to discuss cases behind the closed doors of the consultation room every Saturday. When this discussion has arrived at a decision in any case, the Chief Justice designates one of the associates to write the decision and the opinion in the case. At this stage, of course, nobody but the court itself knows what the decision is, and it may be weeks and even months before anybody else knows, though the messenger and the private secretary of the associate judge might by reason of their access to the papers or in the course of their duties learn of the decision and the opinion long before they were formally prepared. Some of the justices write their opinions and decisions out in long hand; others dictate them to their secretaries. In the case of the latter, the private secretary would necessarily know of the decision long in advance, and if he were corruptible would afford an opportunity for a leak. These secretaries, however, are men who have been carefully chosen, and they are supposed to be beyond corruption, unless the theory be accepted that every man has his price.

The messengers are negroes who are in effect body servants of the justices. They come with the office and are not appointed by new justices. They take them just as they take the routine of the court and its furniture. The office of messenger to a Supreme Court justice is almost hereditary—at any rate the position often passes from father to son, and these often old and faithful persons are considered as much above reproach as the court itself. Indeed, they hold that it is a part of their duty to break in each new justice and inform him fully as to what he may and may not do and what has always been done with respect to this and that.

Justices have complained that they are in thraldom to these human inheritances and that they can no more escape from their dictates than a new Cabinet officer can escape from the slavery of the surrounding bureaucracy. Being body servants, they undertake to regulate the domestic lives and conduct of the justices and are popularly supposed to dress them in the morning, wait on them at table and tuck them into bed at night.

Now, one of these august servants, in the course of gathering up the justice-master's papers each day and carrying them to the latter's residence—for justices of the Supreme Court have no offices other than those they provide in their own homes—undoubtedly would have an opportunity to learn of the nature of a decision immediately after arrived at in consultation—and doubtless they often do. But so long as men have faith that the sun will continue to rise in the East no person connected with the Supreme Court would ever dream of infidelity in one of these messengers. If one of them should ever fail the impression would undoubtedly permeate the Supreme Court and its whole environment that all human nature is congenitally depraved and faithless. Thereafter no justice would believe in his own virtue.

It is these living traditions of the court who carry the manuscript of the justice's decision to the printer, it is they who carry the galley proofs back and forth, and it is they who have custody of the decision in the final form from the moment the printer delivers it until the justice takes the copies into his own hands. Sometimes a justice may even go to the print shop himself and there read the proofs in a little booth set apart for the purpose.

Once the copy is in the hands of the printer another potential leaking point is reached. The public printing office may do for all other branches of the government, but not for the Supreme Court. The public printing office is good enough for the President of the United States, but it is not exclusive enough for the Supreme Court. Every other department of government is compelled to have its printing done by the Public Printer, and if sometimes in an emergency some official does employ a private printer a Congressional investigation may ensue, and he is likely to have to foot the bill out of his private funds; but nobody dares to defy the custom of seventy years and the preference of the Supreme Court.

Ever since the court began to have its opinions printed before handing down decisions, which was in the early '50s, the same modest little job printing house in Washington has been entrusted with this confidential work. Anybody who is interested enough to make the most casual inquiry almost anywhere in Washington, except at the Supreme Court itself, can ascertain who this confidential printer is. After being denied this bit of information by the clerk of the court, James D. Maher, I found out the name of the printer within five minutes, but because it is part of the tradition of the court that nobody shall know who this important functionary is I shall not now disclose his name and address lest I be guilty of something like contempt of court. It is enough to know that the distinguished little shop has been continuously printing things in Washington ever since the first term of Thomas Jefferson; that the present ownership has been in possession for more than forty years, and that the manager has been on the job for nearly thirty years.

Probably half the adult population of Washington confidentially knows the identity of the Supreme Court's printer, but it is something that nobody ever talks about. The high court assumes that nobody knows who its printer is, and the worshipful Washington public unquestioningly accepts the assumption and never reflects on the inconsistency between the assumption and the fact.

When I ventured into the privileged shop and mentioned my mission I was received with about as much cordiality as the Grand Llama of Tibet formerly bestowed on a foreign devil. I was given to understand that I had violated the holy of holies and that my only chance of being shrived was to hasten to Clerk Maher and confess my great offending.

This venerable printery and all connected with it consider that they are an ancient and indispensable part of the court. For 114 years they have served the general public as well as the government with austere fidelity, and for sixty-five years they have been printers to the Supreme Court, during which period they have handled more than 15,000 cases without a suspicion of betrayal of trust. No responsible attaché of the house would any more think of willingly violating the court's confidence or of failing to take every precaution to protect it than he would think of committing the unpardonable sin against the Holy Ghost. Even so, every precaution is taken to guard against the possibility of some printer being faithless to the high traditions and grave responsibilities of the shop. The Supreme Court copy is as much as possible cut into "takes" that are meaningless by themselves, and care is taken that no typesetter shall get consecutive portions of it. The foreman or "preparer" who cuts the copy, the proofreader and the pressmen, of course, have opportunities to learn the nature of the decisions, but, as in all things human trust must be reposed somewhere, and though they are carefully watched, they are considered faithful unto death.

Clerk Doesn't Know

The messenger who carries the printed copies of the opinion and decision to the proper justice would, of course, have a chance at the secret, but he is supposed to be immune to temptation. Even Clerk Maher, after fifty years of impeccable service to the high priests of national justice, does not see or know the nature of an opinion before it is handed down in open court.

There are ordinarily just enough copies of the first "run" to supply each of the nine justices and the clerk. The justice responsible for the formulating of the opinion hands a copy to each of the other justices, who records thereon his concurrence and returns it. Then on the next "decision" Monday the particular justice announces the decision, and then, and not until then, does Mr. Maher get his file copy. Sometimes, if the case is of great public interest and importance, two or three extra copies may be provided for the press associations, but ordinarily the newspaper men have to consult the one copy of the opinion in the clerk's possession if they wish to report the general nature or text of the opinion. It will thus be seen that in the ordinary course none of the attaches of the court except the messenger and secretary of the justice who delivers the opinion has any access to it at any stage before it becomes public property.

Of course, from the moment that the decision is arrived at in consultation every justice knows what it is, but it is an iron-bound tradition of the court, never violated, that no justice shall discuss a case with any one in any manner; and as for his revealing the decision itself before the appointed time, when it comes to that there is indeed no health in any of us, and mankind may be deemed to be plunged into sin and beyond redemption.

In such affairs a justice of the Supreme Court is an isolated and sacred being, separated by an impassable gulf from acquaintances, friends and family. Nobody may approach him in this relation and go unscathed.

An oft retold story in Washington relates that once upon a time an innocent and unsophisticated niece of a justice, being a guest in his household, lightly and thoughtlessly remarked at the breakfast table that she hoped his decision in a certain case would be thus and so, as otherwise she would be grievously affected in her private fortune, being a stockholder in a company that was a party to the suit in question. Thereupon the great man, who had been chatting as freely and as simply as any man in the bosom of his family, became the very incarnation of offended dignity, arose and said:

"I shall now leave the room as a mark of my supreme displeasure with you, and I warn you that if ever again you mention in my presence any case before the Supreme Court you will never be allowed to enter this house thereafter."

There is something awesome about the Supreme Court that attaches to every person and thing associated with it. One may become familiar with and disrespectful to everything in Washington, even the Senators and the President. The intimates of the President may talk jocularly with him about his duties, but to all men the justices of the Supreme Court are distant, aloof and unapproachable on all matters pertaining to their duties. It has been said that it is conceivable that a President might once speak to a justice even in the most innocent manner about some case before the court, but that he would never do

The Supreme Court of the United States as it is to-day: Sitting, left to right, Mr. Justice Day, Mr. Justice McKenna, Mr. Chief Justice White, Mr. Justice Holmes, Mr. Justice Van Devanter. Standing, left to right, Mr. Justice Brandeis, Mr. Justice Pitney, Mr. Justice McReynolds, Mr. Justice Clarke

The Supreme Court chamber. The attorneys, attendants and spectators are standing awaiting the entrance of the court.

Kansas to Curb Capital and Labor

A COURT of industrial relations, where employers and employees may have adjudicated their grievances over wages, hours or conditions, and where the public may obtain action that will prevent either capital or labor injuring the innocent third party, is planned for Kansas by Governor Henry J. Allen. He has called a special session of the Legislature to meet January 5, and already the bill which will carry his ideas into effect has been drafted and is ready for presentation to the House and Senate on the day they convene.

Ever since the opening of the steel strike Governor Allen has been studying the labor situation. He sent to New Zealand and Australia and obtained copies of the laws relating to the courts of industrial relations in those countries. These courts were created and the details worked out by the labor unions. In both countries the courts have achieved great success, chiefly because they started with the confidence of the laboring men and partly because of the opposition of capital, but with public sentiment generally backing them.

In Kansas, the court of industrial relations is going to be started with only public sentiment back of it, for both labor and capital are fighting the plan bitterly. Labor does not want it because labor leaders contend that labor cannot be regulated by law or compelled to do anything it does not want to do. Capital contends that the plan is worthless because it sets up a greater alleged interest than property, this interest being the general public.

So, both sides are going to fight the proposition—are fighting it now—but public sentiment is for it, because the public has suffered from the coal strike and wants to give an honest trial to some plan which will tend to prevent such suffering in the future.

All cases which come before this court might rightfully be entitled "The Public vs. Labor and Capital," for the public is going to be the chief party at interest in all proceedings. Here is where the Kansas scheme takes its first departure from all other plans for settling industrial disputes in this country. All compulsory arbitration, conciliation or other schemes have been operated upon the theory that each side should have a representative, or several representatives, and then these biased members select a third representative, and each side tries to get some one who has been an employer or an employee, and neither ever takes into consideration the public.

The Public First

The settlement of labor disputes has been a matter of dickering between the employer and employee without regard to the interest of any one else. The Kansas scheme is founded upon the proposition that the public is more directly and vitally interested in the uninterrupted operation of essentials than either the employer or the employee; that the public is as directly interested in good wages, decent hours, clean, sanitary and healthful working conditions as the laboring man, and that the public is as interested in the successful, profitable and economical operation of any essential industry as the employer.

This is the point from which the Kansas court of industrial relations starts, and it is the point of variation from all other labor and industry plans so far presented in this country. Governor Allen worked out the general outlines of his plans from the reports and statements of both sides and the public in New Zealand and Australia and a reading of all the discussions in the settlement of labor disputes in recent years in this country. Then he sent for W. L. Huggins, member of the Public Utility Commission, and Frank C. Price, state Senator, both lawyers of known ability. The governor explained his plan and then told the lawyers to get to work and draft the bill to go to the Legislature.

Governor Henry J. Allen of Kansas, who holds that the public's interest is superior to that of either capital or labor

The bill provides for a special court of three members to be named by the governor. They are to receive the same salaries as the governor and justices of the Supreme Court and are not to be directly concerned with either labor or industry. As near as may be it is proposed to have the court composed of three men who are big enough to grasp the fundamentals of the industrial situation and study them from a strictly unbiased standpoint, without prejudice toward either side of the matter in dispute. This court is to present both sides of the dispute and act for the general public. The bill as drawn affects only industries concerned with the production of food, clothing, fuel and public utilities, but there is a disposition among members to include all industries.

Penalties for Violation

The general provisions of the law apply equally to the unions and the employers. The unions are required to take out state charters and establish definite responsibility to the state, and are under state regulation. It may be that bonds may be required from each union for the enforcement of the fulfilment of contracts. Or the union may be ousted and the agitators put in jail or fined and the state may take over its books and effects.

The bill also authorizes the state to take control of any industry through a receivership, as was done in the coal mine strike. Whenever an employer refuses to do the decent thing, refuses to obey the orders of the court, refuses to meet his employees and threatens a lockout, the state may step in, put the employer in jail, fine him and take charge of his property and run it through receivers.

Either side to a labor controversy may lay its case before the industrial court, regardless of whether or not the industry is classed as an essential. If it is an essential industry, like milling, coal mining or railroad operation, then the dispute must be laid before the court as soon as both sides cannot reach an agreement. And there must be no strike or lock-out while the court is considering the dispute. When the court makes its decision it can enforce it by receivership, ouster, criminal proceedings or such other proceedings as may be necessary or legal.

The court may go anywhere in Kansas and hold sessions. It is to have engineers and attorneys to make investigations and handle its legal matters. It may summon any one to come before it or take the books of any industry or union and examine them. In fact, the powers of the court, under the proposed law, are practically unlimited when it comes to investigating any feature of any industrial dispute, and it is believed that when the court gets the exact facts in any matter and makes its decision, public opinion on the justice of the decision will force acceptance, and the full powers of the state will actually never be required to enforce rulings of the court of industrial relations so long as the public generally has confidence in the fidelity of the court and the honesty of the investigations.